IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.1008 of 2005

Chandrakant Jagannath Kadam
and others ..Petitioners

vs.

Bhaskar Baburao Kadam
and others ..Respondents

Shri P.N.Karlekar for petitioners.
Shri U.B.Nighot for respondent nos.1 to 4
Smt.Sushmita Bhende, A.G.P. for State.

CORAM: A.P.SHAH &
Dr.D.Y.CHANDRACHUD JJ.
13th July,2005

P.C.

. Heard Advocates.

1. On introduction of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, a Consolidation Scheme was implemented in village Loni, Taluka Khandala, District Satara in 1974 under section 20 of the aforesaid Act. Under the said Scheme, Survey No.109/1, Gat No.644 admeasuring 1 H 82 R was allotted to the petitioners whereas Gat No.643 from out of Survey No.109/2 admeasuring 1 H 9 R was allotted to the respondent on 17th January, 1977 and Transfer Certificates were issued to the respective parties.

2. Nearly six years after the Scheme was implemented the petitioners filed an application

before the Settlement Commissioner, Pune for correcting the original Consolidation Scheme on the ground that the area was wrongly recorded by the Consolidation Officer. The Settlement Commissioner, Pune vide his order dated 24th December, 1992 modified the Scheme and corrected the alleged arithmetical mistake by including 59 R out of respondents' Gat No.643 kin Gat No.644 of the petitioners.

3. Being aggrieved the respondents preferred an appeal before the Secretary and Special Executive Officer (Appeals), Revenue and Forest Department, State of Maharashtra. The appeal was dismissed by the Secretary and Special Executive Officer (Appeals) vide order dated 4th May, 1998. The respondents then preferred a Review Application which came to be allowed by the Minister for State (Revenue) on 3rd July, 2004 and the order of the Settlement Commissioner and the order of the Secretary and Special Executive Officer (Appeals) were set aside.

4. The Minister has recorded a categorical finding that the correction was made in the original Scheme without giving notice to the respondents. The Minister has also recorded a finding that at the time of preparing the Consolidation Scheme area under actual cultivation and possession was taken

into consideration and as per the admitted area in possession and cultivation of the parties, the possession receipts were drawn and effect was given to the Scheme. More over the Scheme of Consolidation was sought to be varied by the Settlement Commissioner after lapse of nearly 6 years. Even if there is no limitation for variation of the Scheme it has to be done within reasonable time. Ordinarily exercise of such power after 3 years from finalisation of the Scheme is not justified. (See Gulabrao Bhaurao Kakade (Smt.) 2001(Supp.) 688 and Limbraj Waman Yede Vs. State of Maharashtra 2004(4) B.C.R.944). Under the circumstances, we do not see any ground to interfere with the impugned order of the Minister

5. Learned Counsel appearing for the petitioners submitted that hearing was held by the Minister in 2001 and order came to be passed only in 2004 and the order of the Minister ought to have set aside on this ground alone and the matter should be sent back to the Minister for fresh hearing. We do not see any point in remitting the matter back to the Minister as in our opinion, variation in the Scheme made by the Settlement Commissioner is patently illegal.

6. In the result, petition is dismissed.